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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 TERRY W. MOWATT,)

11 Petitioner,)

12 v.)

13 HAROLD CLARKE, *et al.*,)

14 Respondent.)

CASE NO. C06-1590-JLR-JPD

ORDER DENYING PETITIONER'S
EMERGENCY MOTION FOR ORDER
REGARDING JURISDICTION
AND VENUE

15 This is a federal habeas action brought pursuant to 28 U.S.C. § 2254. Petitioner, with the
16 assistance of counsel, filed his federal habeas petition on November 2, 2006. In his petition,
17 petitioner identifies a 2000 King County Superior Court judgment as the judgment under attack.
18 Petitioner also indicates in his petition that he is currently serving his Washington State sentence at a
19 private correctional facility in Florence, Arizona. On November 3, 2006, this Court issued an Order
20 directing that petitioner's petition be served on respondent, and that respondent file an answer to the
21 petition within 45 days.

22 On November 8, 2006, petitioner filed an "Emergency Motion for Order Regarding
23 Jurisdiction and Venue." In his motion, petitioner asks the Court to enter an order confirming that
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25 ORDER DENYING PETITIONER'S
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1 jurisdiction and venue are appropriate in this District rather than in the District of Arizona where
2 petitioner is physically located at the present time. Petitioner's counsel explains that his intention is
3 to withdraw from this matter, now that the petition has been filed, but that he wishes to ensure there
4 are no lingering procedural issues that might interfere with petitioner's ability to seek habeas relief in
5 federal court.

6 The Court, having reviewed petitioner's federal habeas petition, petitioner's Emergency
7 Motion for Order Regarding Jurisdiction and Venue, and the balance of the record, does hereby find
8 and Order:

9 (1) Petitioner's Emergency Motion for Order Regarding Jurisdiction and Venue (Dkt. No.
10 4) is DENIED. The Court first notes that petitioner has now apparently filed a habeas petition in the
11 District of Arizona. (*See* Dkt. No. 9.) The filing of the action in the District of Arizona effectively
12 moots the instant motion as petitioner has now presumably secured the protection he sought by way
13 of the instant motion. However, even assuming petitioner's recent filing in Arizona does not moot
14 the instant motion, the instant motion is unnecessary.

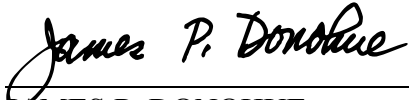
15 After petitioner filed his petition, but before the Court issued its Order directing service of the
16 petition on respondent, the Court screened the petition and made a preliminary determination that the
17 petition was properly filed in this District. If, once an answer is filed, and the record is more fully
18 developed, this Court determines that the petition was filed in the wrong district, the Court has the
19 option to dismiss the petition or transfer it to the appropriate district. *See* 28 U.S.C. § 1406(a).¹ In
20 this Court's view, if statute of limitations concerns are evident, the interests of justice would require
21 transfer of the petition rather than dismissal. Because the concerns raised by petitioner in his

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23 ¹ Section 1406(a) provides that when a case is filed in the wrong district, the district court
24 "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which
it could have been brought."

1 emergency motion are addressed by the statutory provisions cited above, this Court declines to grant
2 the extraordinary relief requested by petitioner.

3 (3) The Clerk is directed to send copies of this Order to all counsel of record and to the
4 Honorable James L. Robart.

5 DATED this 21st day of November, 2006.

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7 JAMES P. DONOHUE
8 United States Magistrate Judge
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25 ORDER DENYING PETITIONER'S
26 EMERGENCY MOTION FOR ORDER
REGARDING JURISDICTION AND
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